

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13854 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BHAGVANDAS VALJIBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13854 of 2004
MR PS PATEL for Petitioner No. 1
MR SP HASURKAR, AGP for Respondent No. 1-2
MR MANISH J PATEL for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/01/2005

ORAL JUDGEMENT

Rule was issued on 19.10.2004 and notice as to interim relief was made returnable on 30th November 2004.

This matter is, therefore, placed before this Court for consideration of grant of interim relief. Both sides, however, agree that the matter can be taken up for final disposal. Accordingly, the petition is heard finally and is being disposed of by this order.

2. In the present petition, the petitioner has challenged the order dated 5.10.04 by which the date of birth of the petitioner in his service book was changed from 28.12.46 to 28.2.44. It appears that initially the date of birth of the petitioner as recorded in the service book was 28.2.44 which later on came to be corrected at his request to 28.12.46. The District Primary Education Officer, however, by his impugned order dated 5.10.04 has once again changed the date of birth of the petitioner to 28.2.44 and directed that he should be made to retire on the basis of the said date of birth.

3. It is not in dispute that before passing the impugned order dated 5.10.04, the District Primary Education Officer had not issued any notice to the petitioner nor was the petitioner given an opportunity to represent his case in any other manner. Thus, the impugned order was passed without affording an opportunity of being heard to the petitioner. Surely, when the impugned order results into civil consequences against the petitioner, it was a bare minimum requirement of law that the authorities should have given an opportunity of being heard to the petitioner and to permit him to represent his case in support of his contention that 28.12.46 is the correct date of birth and that the correction once granted in his service book should not be changed after a reasonable period of time. No such opportunity having been granted, the impugned order is required to be quashed only on this ground.

3. In the result, the impugned order dated 5.10.04 is quashed and set aside. Setting aside of the order, however, shall not come in the way of the respondents in passing fresh order in accordance with law after giving a reasonable opportunity to the petitioner of being heard. Upon setting aside of the impugned order, the petitioner would be entitled to all consequential benefits. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)